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October 27, 1983

Mr. Mark Connolly
Assistant Secretary of State
State House Annex
Concord, New Hampshire 03301

Re: Registration of Foreign Corporation Trademarks

Dear Mr. Connolly:

By memorandum dated October 3, 1983, you requested our advice on the following question.

Is it necessary for a foreign corporation to register with the Secretary of State to do business in the State of New Hampshire before registering a trademark under RSA 350-A?

RSA 350-A, New Hampshire's version of the model trademark, allows any corporation who adopts and uses a trademark in this State to register that trademark with your office. The phrase "used in this State" is defined in RSA 350-A:1, VIII. That statute reads as follows:

For the purposes of this chapter, a trademark shall be deemed to be "used" in this state (a) on goods when it is placed in any manner on the goods or their containers or the displays associated with or on the tags or labels affixed thereto and such goods are sold or otherwise distributed in the state, and (b) on services when it is used or displayed in the sale or advertising of services and the services are rendered in this state.



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Any corporation which uses a trademark in this State, as that phrase is defined in the statute above, may register that trademark with your office provided it does not run afoul of any of the restrictions in RSA 350-A:2. Those restrictions are not relevant for our present purpose.

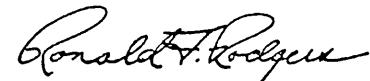
Neither the Trademark Act nor the New Hampshire Business Corporation Act, RSA 293-A, explicitly require a foreign corporation to register to do business prior to registering a trademark for use in this State. RSA 293-A:107 provides the standards for determining when a foreign corporation must apply to your office for a certificate of authority. The only positive standard contained in that statute requires a foreign corporation to obtain a certificate of authority before it shall have the right to "transact business" in this State. The phrase "transact business" is not defined for purposes of this statute. There are, however, a number of negative standards contained in RSA 293-A:107, II. That subsection sets forth 10 examples of activities that a foreign corporation may pursue in this State without "transacting business." Those activities include both "effecting sales through independent contractors" and "transacting any business in interstate commerce." RSA 293-A:107, II (e) and (i). Because RSA 350-A:1, VIII provides that a trademark is "used in this state" when it is placed in any manner on the goods or their containers or on the tags or labels affixed to the goods, and those goods are sold or distributed in the State, whether or not such sale or distribution is accomplished through an independent contractor or in interstate commerce, it is clearly possible for a corporation to be "using" a trademark in this State and yet not be "transacting business" in this State. Thus, a corporation may be eligible to register a trademark in this State without being required to register to do business as a foreign corporation.

For the foregoing reasons, your office should not require that a foreign corporation register to do business in the State of New Hampshire prior to applying to register a trademark for use in this State. You should accept all applications for registrations of trademarks that are "adopted and used" in this State and that do not violate any of the conditions set forth in RSA 350-A:2. The foreign corporation must decide on its own whether the activities by which it is "using" its trademark in this State constitute the transaction of business under RSA 293-A:7, and whether it is therefore required to register to do business with your office.

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I trust that this is responsive to your inquiries. If you have any further questions on this matter, please do not hesitate to contact me.

Very truly yours,



Ronald F. Rodgers
Assistant Attorney General
Division of Legal Counsel

RFR:alh
83-129-I